(D) REMARKS, DRAWING AMENDMENTS

The issue is whether Martin anticipates the present application under Sec. 102.

Turning to the specific claims remaining in the present application, the law is clear. The absence ***from a reference*** of ***any*** claimed element negates anticipation. Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 230 USPQ 81 (Fed.Cir. 1986). A valid rejection on the ground of anticipation requires the disclosure ***in*** a single prior art reference of ***each element*** of the claim under consideration. Emphases added. Soundscriber Corp. v. U.S., 148 USPQ 298, 301 (1966); In re Donohue, 226 USPQ 619, 621 (Fed. Cir. 1985). All emphases added.

WITH RESPECT TO CLAIM 1

1. The present application and the Martin reference are directed to different fields of technology as evidenced by the preamble of Claim 1

Applicant claims:	The Office alleges Martin teaches:
" Apparatus for real estate ~~escrow transactions~~ transfer processes and procedures, comprising"	"fund allocation methodology"; Action Page 2, para 3.

Applicant does not understand this alleged equating of elements, even in the unamended form. Applicant is claiming a computer hardware apparatus? How does Martin's "fund allocation methodology" equate to an apparatus (see also, arguments hereinbelow next with respect to "network")? Please cite the exact column and line reference where the Martin patent evidences a "fund allocation methodology" and that Martin explains or defines this as real estate escrow transactions or real estate transfer processes and procedures.

In fact, "real estate escrow" is a term of art, and also is explained clearly in the present specification. It is well known in the art that it is fundamentally ***not*** a "fund allocation" for a payment on a debt obligation due and owing. As examples, applicant has shown by Exhibits A

and B, filed previously and attached hereto again for the convenience of the Examiner, that the only semblance to a "fund allocation" or for that matter any money distribution is *after* closing a real estate escrow. Attached as EXHIBIT A is a flow chart by Central Escrow, Inc., showing the "Life of an Escrow." Note carefully that is not until the penultimate step and clearly after the "CLOSE FILE" step that there is any kind of step of payment, "DISBURSE FUNDS." But even then, the escrow file is already closed. Attached as EXHIBIT B is a flyer by Gateway Title Company. Note that in the center column under "The Escrow Officer" it is the ultimate step where debt payment occurs, and this is under "Closes the escrow by...". Also note that even this is optional versus cash: "The Lender (When Applicable)." The "real estate escrow" processes and procedures as claimed by the applicant incorporate many steps above this penultimate flow chart step. Attached hereto as Exhibit C (3 pages) is an actual CLOSING AGREEMENT AND ESCROW INSTRUCTIONS from Premier Escrow Inc. Note on page 2

> "THE CLOSING AGENT IS INSTRUCTED TO PROCEED AS FOLLOWS:
> Instruction ***to Close.*** ***". . .and to disburse the funds according to the settlement statement, adjusting estimated amounts, ***when the closing agent has the documents required to close the transaction in its possession***. . .***
> Adjustments and Pro-rations. The ***closing agent*** is instructed to adjust and pro-rate real estate taxes for the current year, recurrent assessments if any, and Property taxes. All pro-rations shall be calculated ***as of [x] the closing date***, or [ ]." Emphases added.

Even here it is clearly evidenced that *an escrow agent, not a debtor nor a loan servicer*, is disbursing (Exhibit, page 3, "Other (ie wire, deposit...)") funds *when closing* the file in its possession which has figuratively held the escrowed property and documentation related to its transfer of ownership. Again, this has nothing to do with the Martin et al. scheme for a debtor using an ATM machine to make a payment on a debt obligation nor the distribution of the payment to various lenders or loan servicers which may be due allocations of the payment. Martin et al. clearly is a downstream process from close of escrow and does not anticipate the claimed elements of present invention.

In other words, the Office argues throughout and as a fundamental tenet of the bases for rejection that Martin's processes are the same technically and under the law as a "real estate escrow." No such equivalency can be sustained. As shown by the accompanying Exhibits of real-world real estate escrow processes, and as is well known in all states such as California

and Washington where real estate escrow companies operate, ***there is no loan payment nor consumer d bt nor mortgage obligation until a real estate scrow is clos d.***

In fact, in its totality with respect to realty, Martin only describes allowing an individual homeowner making a mortgage payment, which may include "impounds" of taxes and insurance via an ATM machine which divies up the payment appropriately. This is clearly admitted by Martin in Column 13, line 47-50 and Column 14, lines 8-13, the only place the word "Escrow" used anywhere in Martin et al. (and even there wrongly, since the term-of-art is "impound," associated with home loans to debtors having insufficient credit ratings; infra), repeated in their entirety here:

"Outstanding Escrow Reserve Balance	Current amount paid by the ***borrower*** and held in escrow reserve by **the servicer** for the ***future*** *payment of real estate taxes, insurance,* etc.
* * *	
Current Escrow Tax *Owed*	Amount of ***payment*** that will be applied to local property taxes managed by **servicer**, if any
Current Escrow Insurance *Owed*	Amount of ***payment*** that will be applied to payment premium on ***homeowners insurance*** managed by **servicer**, if any"

Emphases added.

The applicant wishes to further illuminate the issue and advance prosecution in reply to the Office's Response conclusory statement:

> "There is absolutely no confusion here, the *impounded escrow* is being managed by the *loan servicer* and such interpretation is valid. Therefore, Martin et al. provided evidence of a manage (sic, managed) escrow account." Final Office Action, page 7, about line 8 et seq.

The issue is whether "such an interpretation is valid."

First, it is well known in real estate that there is no term of art such as an "impounded escrow." "Impound" is a term of art, a noun. An "impound" is when a lender (a bank or savings and loan institution, not a mere loan servicing company nor mortgage broker) requires that in addition to monthly principal and interest on the mortgage - - which is a debt obligation *after it is implemented when or after (in a refinance mortgage arrangement) a real estate escrow is closed* - - that the borrower, who is the "buyer" during escrow and the new "owner" of the property *after escrow is closed*, must pay in advance on tax and insurance bills before they become due in the "future. For example, real estate property taxes are due bi-annually in most states; if the borrower will owe $1200 6-months from now, having been found by the bank during its independent loan application investigation (viz., not an escrow process or procedure as is well known in the art) to otherwise have an insufficient credit rating to get the mortgage without impounds, the lender requires "current monthly impounds" of $200 each in addition to his monthly mortgage payment for that up-coming tax bill in the "future." Such impounds may be governed by law; see Exhibit D, California Civil Code, Sec 2954 (re: when allowed), 2954.2(3) (definition), 2954.8 (re: interest requirement), four pages. This impound account is by definition a separate and distinct type of agreement between the borrower and lender regarding a mortgage loan in which taxes and insurance advance payments are held by the lender or loan servicer in a "trust or other type of account" (Sec. 2954.2(3),), which pays interest (Sec. 2954.8); again, this is *downstream in time* of a real estate transfer escrow account *closing*. Moreover, since as it is well known in the art that there are no "escrow file impounds" *during* escrow but only in securing an existing debt obligation thereafter, the use by Martin et al. of the term "current escrow {tax, insurance, refund} . . ." *can not* mean that "the escrow is still open;" in context, the word "current" can only mean that the impound obligation is ". . .presently elapsing (2): occurring in or belonging to the present time (3): most recent ..." Webster's New Collegiate Dictionary, Merriam-Webster. In other words, in the vernacular, it is a part of the payment on a debt now due and owing, i.e., the current payment to the bank on the debt obligation includes mortgage principal, interest and current impounds for the next coming tax or insurance payment.

Second, as there is no loan existent, no finalized mortgage agreement, until close of escrow, there *is no loan "servicer" (Martin FIG 2, element 24) in real estate escrow processes and procedures* which are at the heart of the present invention. It is common knowledge in the art

that any loan debt obligation in a real estate escrow is not issued or effective until the successful closing and the passing of clear title from Seller to Buyer. As such, a "loan servicer" can not even enter the picture until after a bank mortgage becomes due and owing after escrow is closed and thereafter the bank shops its loan out for payment management. Martin clearly only provides for payments via an ATM machine for such a debt downstream from escrow. Again, while Martin mistakenly labels impounds as "escrow tax" and "escrow insurance," in Martin's own words there is e.g., a "current escrow tax owed," meaning the new owner of the property has an impound payment currently due; escrow *must* have been closed prior to this legal obligation occurring for the new owner who bought the property who is therefore no longer just the "buyer."

There is no evidence that Martin's automated debt payment by ATM it even relates to the same fundamental field of technology nor is addressing issues of real estate escrow processes and procedures. On this ground alone, the rejection should be withdrawn.

2. The first element of applicants claim is not anticipated by Martin

Continuing with an analysis of claim 1, after "comprising:"

Applicant claims:	The Office alleges Martin teaches:
"a computer based automation system, having Internet communications,"	"networks, fig 2"

Applicant does not understand this equating of elements, even in the unamended form. Please cite the exact column and line reference where the Martin patent evidences that Fig. 2 is a network. Martin et al. themselves states at Col. 8, starting at line 39:

> "FIG. 2 shows a block diagram of the present invention illustrating ***the transactions that occur during the payment of a debt obligation*** in accordance with the present invention." Emphasis added.

Thus, in Martin's own definition of FIGURE 2, there is no evidence of a computerized "network" and, moreover again, here is a clear admission that the patent is for "payment of a debt

obligation," totally irrelevant to real estate escrow processes and procedures. Alleging that this is a "network" is extrapolation by the Office, not a disclosure of Martin itself.

It is axiomatic that claims are not to be interpreted in a vacuum. Slimfold Mfg. Col v. Kinkead Indus.,810 f.2d 1113, 1 USPQ 2d 1563 (Fed. Cir. 1987); Moleculon Res. Corp. v. CBS, Inc., 793 F.2d 1261, 229 USPQ 805 (Fed. Cir. 1986). The claim and specification language must be considered. DMI, Inc. v. Deere & Co., 755 F.2d 1570, 225 USPQ 236 (Fed. Cir. 1985). By ignoring the present application's use of the claims limitations as discussed in the Detailed Description, the argument as set forth in the Action ignores this requirement. Understanding, or Interpreting, a limitation *already in a claim* in light of the Detailed Description is not the same as an impermissible reading of a limitation into a claim. Otherwise, these court decisions are rendered meaningless. This need for consideration of "specification language" is particularly applicable in computer process cases where terms carry a special rather than ordinary (dictionary) meaning.

In fact, in his own words, ***Martin totally and unequivocally relies on proprietary, specially-networked ATM machines***; col. 1: ll. 17 et seq.:

> "These networks are *specialized digital packet networks* that communicate with various ATM transaction processors and service providers using standard message protocols developed by ANSI and others. A more-or-less standard, generic *ATM interface* has developed in the banking industry, making it relatively easy for a consumer to use any *ATM* on any *ATM network* once he has learned how to interact with this more-or-less standard interface." Emphases added. (Those specialized protocols are cited at col. 15: ll. 55-58).

Applicant herein is claiming an Internet based computer system; such terms of art can not be ignored when considering the art nor the present invention. It is common knowledge that ATM's do not allow Internet access by the user; the ATM user merely indicates by selecting pre-programmed display functions, e.g., DEPOSIT, WITHDRAW, CASH BACK...etc., and entering a dollar amount, the amount of the selected transaction.

There is no disclosure by Martin of applicant's claimed elements, only "ATM" machines Martin describes.

On this ground alone, the rejection should be withdrawn.

3. The second element of applicant's claim is not anticipated by Martin

Applicant's claim continues:	The Office alleges Martin teaches:
"...components associated with said Internet communications for implementing, managing, and tracking ~~of the escrow transactions~~, said real estate transfer processes and procedures ..."	"see abstract, fig 2, 3, column 4, line 44-59, 5 line 36-61, 10 line 22-56, table 1, column 13 and 14"

The Office provides no reasoning for these specific citations which it merely chain-cites. Applicant has carefully reviewed all citations made by the Office and finds no such disclosure in Martin. It is respectfully requested that the Office cite the exact column and line reference where the Martin patent evidences (1) components associated with said Internet communications, (2) for implementing, managing, and tracking said real estate transfer processes and procedures, so that applicant may respond accordingly. Otherwise, applicant is left to guess at the Examiner's argument(s).

Absent such teaching by Martin, the rejection should be withdrawn on this ground alone.

4. The ultimate elements of Claim 1 are not found in Martin

Applicant claims:	The Office alleges Martin teaches:
"wherein data and documents for said implementing, managing, and tracking ~~the escrow transactions is~~ are accessible ~~for specific~~ to principals and parties ~~to~~ during said ~~escrow transactions~~ processes and procedures."	"see abstract, fig 2, 3, column 4, line 44-59, 5 line 36-61, 10 line 22-56, table 1, column 13 and 14"

Again, the Office provided no reasoning behind its mere chain-cite. Applicant has carefully reviewed all citations made by the Office and finds no such disclosure in Martin. It is respectfully requested that the Office cite the exact column and line reference where the Martin patent evidences "wherein data and documents for said implementing, managing, and tracking are accesible...," so that applicant may respond accordingly. Otherwise, applicant is left to guess at the Examiner's argument(s).

Absent such teaching by Martin, the rejection should be withdrawn on this ground alone.

Clearly, on the face of the reference itself, Martin et al. describes only an,

> "AUTOMATED *DEBT PAYMENT* SYSTEM AND METHOD USING *ATM* NETWORK."
> Title, emphases added.

It is, again in Martin's own words,

> "An electronic *funds transfer* methodology for providing access to a plurality of non-bank *loan payment* processors (loan servicers) through established ATM (automated teller machine) networks, thereby creating *a payment system* designed to allow a consumer to initiate an electronic *transfer of funds* from a primary bank transaction account (e.g., checking account, savings account) to a loan servicer to satisfy an *outstanding consumer debt or payment of an obligation.*" Abstract, first sentence, emphases added.

Each independent claim of Martin is to "debt payment ...using an ATM network..." (Cl. 1, 4, 5), or "making a payment on one consumer debt obligation...using an ATM network...." (Cl. 8). As

noted hereinabove, these are unrelated to the "real estate escrow," "real estate transfer processes and procedures," of the present invention.

Note particularly that Martin's processes by his own specification language also requires a "3rd Party Loan Payment Facilitator" 26 and a "Loan Servicer" 24. See also Martin FIG. 4, 402, FIG. 5, 500, FIG. 6, 608-612. These types of parties are not involved in a real estate escrow -- see, e.g. Exhibit A, Exhibit B, applicant's FIGURE 1A-1C -- and debt obligation payment facilitation is unrelated to the "real estate escrow" processes and procedures as defined in the present application.

In addition to the fact that Martin on its face does not meet the requirements of the law, supra, it seems to the applicant that the citation of Martin is based solely on Martin's minimal use of the words "mortgage" and "escrow" which in fact only describes an ATM machine only to allocate payments on existing debt obligations, ***obligations which do not yet exist during real estate escrow process and procedures.*** One does not own payments for taxes nor insurance on a piece of property one does not own; the Buyer does not own the property until close of escrow.

With all due respect, the Examiner's "interpretation," supra, is not valid. On its face, by definition made by Martin et al. themselves, they can not have considered nor does their disclosure cover real estate escrow processes. The Martin reference utterly fails as a reference anticipating the present invention. The rejection should be withdrawn.

WITH RESPECT TO DEPENDENT CLAIMS 2-3

A dependent claim includes all the limitations of the claim from which it depends and, as such, makes specific that which was general. 35 U.S.C. 112; 37 C.F.R. Sec. 1.75(c); Allen Group, Inc. V. Nu-Star, Inc., 197 USPQ 849 (7th Cir. 1978); Ex parte Hansen, 99 USPQ 319 (Pat. Off. Bd. App. 1953). Dependent claims are non-obvious if the independent claims from which they depend are non-obvious. In re Fine, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988); *see also* Hartness International, Inc. V. Simplimatic Engineering Co., 2 USPQ2d 1826, 1831 (Fed. Cir. (1987) to the same effect re novelty). Thus, allowance of a base claim as patentable normally results in

allowance of a claim dependent upon that claim. It is respectfully requested that the rejections be withdrawn.

Applicant reserves all rights without prejudice to submit further arguments with respect to the dependent claims should allowance not be forthcoming.

Moreover, again the Office proffered no reasoning against applicants claims, merely the same chain citation. Applicants have searched the Martin reference and do not find any such elements in the Martin reference. It is respectfully requested that the Office cite the exact column and line reference where the Martin patent evidences each and every one of applicants "components" so that applicant may respond accordingly. Otherwise, applicant is left to guess at the Examiner's argument(s).

WITH RESPECT TO INDEPENDENT CLAIM 4

Applicant claims:	The Office alleges:
A Web-based client-server computer system for escrow of real estate, comprising: at least one client module associated with at least one client party for initiating an escrow process with at least one escrow-holder party; and at least one server module associate with the escrow-holder party, wherein a specific escrow account between said client party and said escrow-holder party is established, maintained, tracked, and consummated via said client-server computer system.	Verbatim copy of claim 4 prior to amendment and "(see abstract, fig 2, 3, column 4, line 44-59, 5 line 36-61, 10 line 22-56, table 1, column 13 and 14)"

The Office provides no reasoning for these specific citations which it merely chain-cites. Applicant has carefully reviewed all citations made by the Office and finds no such disclosure in Martin. It is respectfully requested that the Office cite the exact column and line reference where the Martin patent evidences each and every one of applicants "components" so that applicant may respond accordingly. Otherwise, applicant is left to guess at the Examiner's argument(s).

The arguments hereinabove and previously with respect to Claim 1 are incorporated herein by reference. Moreover, applicant finds nothing in the chain-cited parts of the Martin et al. patent, nor anywhere else therein for:

(1) "A Web-based client-server computer system for escrow of real estate":

It is known in the art at "client-server" is a term of art for Internet transactions, not for ATM machine functions nor specialized network requirements. Applicants have added the adjective "Web-based" even though this may be redundant to "client-server" as those terms are used in the art so that there can be no argument that the terminology is vague or ambiguous. Martin teaches no such element.

(2) "at least one client module associated with at least one client party for initiating an escrow process with at least one escrow-holder party; and":

Applicant finds nothing in Martin with respect to "client modules" nor "escrow processes" nor "escrow-holder parties" as those terms are used in the art.

(3) "at least one server module associate with the escrow-holder party":

Applicant finds nothing in Martin with respect to "server modules" nor ""escrow-holder parties" as those terms are used in the art.

(4) "wherein a specific escrow account between said client party and said escrow-holder party is established, maintained, tracked, and consummated via said client-server computer system."

Again, one must understand the difference between payment of debt obligations, the very essence of the Martin et al. patent, and real estate escrow accounts. A Buyer and his real-estate agent make a contract bid on a house. The Seller and his real-estate agent accept the contract. The contract is deposited with an escrow-holder. Referring to EXHIBIT A and B hereto, the processes and procedures shown are implemented. These processes and procedures are unrelated to debt payment.

Many states, such as New York and New Jersey, accomplish the transfer of real property from one current owner, the Seller, to a new owner, the Buyer, requires the use of attorneys by each party transfer. In many states, such as California and Washington, rather than the use of attorney offices and services, the transfer of real property between a Seller and Buyer requires the use of "escrow companies," e.g. Central Escrow, Inc., Exhibit A hereto, or applicant's own company EZESCROW, and "title companies," e.g., Gateway Title Company, Exhibit B hereto. Such escrow companies and title companies are not lending institutions just as law firms are not lending institutions. At the most, an escrow company will track any borrowing-lending pre-arrangements instituted by the Buyer with a bank, savings and loan, mortgage broker, or the like, if and when the Buyer seeks a mortgage to finance the transaction.

It is simply impossible to conclude that a real estate escrow process as evidenced by these EXHIBITS and known to persons skilled in the art is the equivalent in any way to Martin's "debt payment" by "ATM" over a "specialized ATM network." The Office itself admits Martin et al. is "...an ATM network path that is used *to facilitate debt payment*: in this case mortgage." Final Office Action, para. 16, page 7. It is a fallacious argument to equate such a debt payment with a real estate escrow.

Therefore, absent the Office showing such claim elements in Martin, the rejection should be withdrawn.

WITH RESPECT TO DEPENDENT CLAIMS 5- 10

A dependent claim includes all the limitations of the claim from which it depends and, as such, makes specific that which was general. 35 U.S.C. 112; 37 C.F.R. Sec. 1.75(c); Allen Group,

Inc. V. Nu-Star, Inc., 197 USPQ 849 (7th Cir. 1978); Ex parte Hansen, 99 USPQ 319 (Pat. Off. Bd. App. 1953). Dependent claims are non-obvious if the independent claims from which they depend are non-obvious. In re Fine, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988); *see also* Hartness International, Inc. V. Simplimatic Engineering Co., 2 USPQ2d 1826, 1831 (Fed. Cir. (1987) to the same effect re novelty). Thus, allowance of a base claim as patentable normally results in allowance of a claim dependent upon that claim. It is respectfully requested that the rejections be withdrawn.

Applicant reserves all rights without prejudice to submit further arguments with respect to the dependent claims should allowance not be forthcoming.

Moreover, again the Office proffered no reasoning against applicants claims, merely the same chain citation. Applicants have searched the Martin reference and do not find any such elements in the Martin reference. It is respectfully requested that the Office cite the exact column and line reference where the Martin patent evidences each and every one of applicants "components" so that applicant may respond accordingly. Otherwise, applicant is left to guess at the Examiner's argument(s).

WITH RESPECT TO CLAIM 11

Applicant claims:	The Office alleges:
(1) Computerized, on-line method for real estate ~~escrow transactions~~ transfer, the method comprising:	Verbatim copy of claim ***1*** :(1) "fund allocation methodology"; "real estate transaction" Action Page 2, para 3.
(2) providing a computer based automation system of components,	(2) "networks, fig 2
(3) including components providing implementation, management, and tracking of the ~~escrow~~ real estate transfer	(3) and (4) "see abstract, fig 2, 3, column 4, line 44-59, 5 line 36-61, 10 line 22-56, table 1, column 13 and 14"
(4) wherein data and documents for implementing, managing, and tracking the ~~escrow transactions is~~ transfer are accessible on-line for specific parties to said ~~escrow~~ transfer.	

All of the arguments set forth above with respect to independent Claims 1 and 4 are incorporated herein by reference.

Again the Office proffered no reasoning against applicants claims, merely the same chain citation. Applicants have searched the Martin reference and do not find any such elements in the Martin reference. It is respectfully requested that the Office cite the exact column and line reference where the Martin patent evidences each and every one of applicants "components" so that applicant may respond accordingly. Otherwise, applicant is left to guess at the Examiner's argument(s).

Absent such showing, the rejection should be withdrawn.

WITH RESPECT TO DEPENDENT CLAIMS 12, 13

A dependent claim includes all the limitations of the claim from which it depends and, as such, makes specific that which was general. 35 U.S.C. 112; 37 C.F.R. Sec. 1.75(c); Allen Group, Inc. V. Nu-Star, Inc., 197 USPQ 849 (7th Cir. 1978); Ex parte Hansen, 99 USPQ 319 (Pat. Off. Bd. App. 1953). Dependent claims are non-obvious if the independent claims from which they depend are non-obvious. In re Fine, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988); *see also* Hartness International, Inc. V. Simplimatic Engineering Co., 2 USPQ2d 1826, 1831 (Fed. Cir. (1987) to the same effect re novelty). Thus, allowance of a base claim as patentable normally results in allowance of a claim dependent upon that claim. It is respectfully requested that the rejections be withdrawn.

Applicant reserves all rights without prejudice to submit further arguments with respect to the dependent claims should allowance not be forthcoming.

Moreover, again the Office proffered no reasoning against applicants claims, merely the same chain citation. Applicants have searched the Martin reference and do not find any such elements in the Martin reference. It is respectfully requested that the Office cite the exact column and line reference where the Martin patent evidences each and every one of applicants "components" so that applicant may respond accordingly. Otherwise, applicant is left to guess at the Examiner's argument(s).

WITH RESPECT TO INDEPENDENT CLAIM 14

Applicant claims:	The Office alleges:
A computerized process for ~~a computerized~~ on-line real estate escrow transaction, the process comprising: providing escrow account data and electronic documents, escrow status, broker status, lender status, buyer status, seller status, and vendor status via a centralized server associated with an escrow officer; and connecting parties to said computerized escrow transaction using multiple computer network access devices via connectivity types which include but are not limited to wireless, satellite, dial-up, or leased communications.	Verbatim copy of claim 14 prior to amendment and "(see abstract, fig 2, 3, column 4, line 44-59, 5 line 36-61, 10 line 22-56, table 1, column 13 and 14)"

All of the arguments set forth above with respect to independent Claims 1 and 4 are incorporated herein by reference.

Again the Office proffered no reasoning against applicants claims, merely the same chain citation. Applicants have searched the Martin reference and do not find any such elements in the Martin reference. It is respectfully requested that the Office cite the exact column and line reference where the Martin patent evidences each and every one of applicants "components" so that applicant may respond accordingly. Otherwise, applicant is left to guess at the Examiner's argument(s).

Absent such showing, the rejection should be withdrawn.

WITH RESPECT TO INDEPENDENT CLAIM 15

Applicant claims:

A system for real-time or near-real-time real estate escrow ~~transactions~~ processes, procedures and documentation, the system comprising:

(1) on-line Internet communications programs;

(2) associated with said Internet communications programs, appropriate data, electronic documents, application[[,]] and transactional management network programs, ~~[[; and]]~~

(3) including supporting network based applications for performing ~~at least one of the escrow~~ services ~~selected from a group~~ including **[[:]]**

(3a) receiving and storing escrow instructions upon submission by a party to the escrow transaction via a computerized communications device;

(3b) disseminating instructions to all relevant parties by computer;

(3c) providing escrow documentation;

providing escrow documentation approvals;

(3d) automating order specified services;

(3e) real-time and near-real-time display of escrow instructions, status, and activity;

The Office alleges:

Verbatim copy of claim 15 prior to amendment and "(see abstract, fig 2, 3, column 4, line 44-59, 5 line 36-61, 10 line 22-56, table 1, column 13 and 14)"

(3f) on-line digital identification authentication;

(3g) transfer of ownership; closing escrow;

(3h) releasing of escrow funds; and

(3i) digital transfer of escrow funds.

All of the arguments set forth above with respect to independent Claims 1 and 4 are incorporated herein by reference.

Again the Office proffered no reasoning against applicants claims, merely the same chain citation. Applicants have searched the Martin reference and do not find any such elements in the Martin reference. It is respectfully requested that the Office cite the exact column and line reference where the Martin patent evidences each and every one of applicants "components" so that applicant may respond accordingly. Otherwise, applicant is left to guess at the Examiner's argument(s).

Absent such showing, the rejection should be withdrawn.

It is clear from the "Response to Arguments" in para. 16 of the Final Office Action, mailed 7/28/2003, not only that there is no clear evidence that the Office has shown Martin et al. describe (1) anything to do with these claimed processes and procedures for the transfer of real estate between two independent parties, Buyer and Seller and their agents, nor (2) the computerization of same such as illustrated in applicant's FIG. 1(a) -1(c). Moreover, the Office's arguments themselves give evidence that the Office is possibly confused about the issues and is interpreting the Martin et al. reference beyond its text and the plain and ordinary meaning thereof.

The Examiner states:

> "Martin et al clearly teach an inventive concept for managing a (sic, an) escrow account in a real estate transaction."

In fact, Martin shows only "debt obligation payment," a different, downstream of escrow for a real estate transfer.

The Examiner next states:

> "The Martin et al's disclosure is related to loan service payment that is related to a real estate purchased or refinanced by a customer"

In fact, "purchased" or "refinanced" means an escrow for a real estate transfer must have closed. See EXHIBITS A and B and the explanations thereof throughout this Paper.

The Examiner next states:

> "It is not simply an ATM machine to conduct banking transaction (sic, (s)) but an ATM network path that is used to facilitate debt payment: in this case mortgage (sic, mortgage debt)."

This is conclusory and contrary to the words and definitions provided by Martin et al. themselves as quoted and the known fundamentals of the field of the technology differences between real estate transfers and "debt payment" as described in depth herein. It is in fact an admission against interest by the Office since it is clear and well known that a mortgage debt and payments thereon are a post-escrow obligation.

The Examiner next states:

> "In Martins (sic) et al' (sic) system jut (sic, just) like in an other (sic, another or any other) mortgage banking system, funds receive (sic) from customer are properly manage (sic) in order ensure (sic, to ensure) that they are properly allocated."

Again, this is in fact ad admission against interest by the Office since real estate transfer processes and procedures, or real estate escrow, as claimed by the present applicant has nothing to do with the "mortgage banking" aspect where payments from a mortgagee are made after escrow has closed.

The Examiner next states:

> "As indicate (sic) by the Applicant, Examiner relied upon table 1 column 14 as rationale for the rejection. There is absolutely no confusion here, the impounded escrow is being

managed by the loan servicer and such interpretation is valid. Therefore, Martin et al provided evidence of a manage escrow account."

Again, this is both a conclusory statement and an extrapolation of what Martin et al. themselves clearly state in the reference. Table 1 and the references to mortgage debt payments are outside a real estate transfer escrow. There is no such thing as "impounded escrow." There are no "loan servicers" withing a real estate transfer escrow. The Martin et al. reference on its face provides on evidence of debt payment using an ATM.

FIG. 3 of Martin et al. in its own terms shows,

"a flowchart illustrating the process of a *debt obligation payment. . ..*" Col. 8, ll. 42 et seq.,

in which the

"User selects option to make loan payment and enters information to identify loan payment and amount." Element 304.

Again, this is unrelated to the "real estate escrow" processes of the present invention, described in more depth previously in response to this reference and hereinbelow.

Again, Martin's use of the misnomers "escrow reserve," "escrow tax" "escrow insurance" for these "impounds" in fact evidences his lack of knowledge of even the basics of real estate escrow processes. Such "impounds," as they are well known to be referred to by those in the art, are required payment amounts to the lender or via the lender's servicer in excess of a mortgage amortization payment when a real estate down payment was low or the borrower's credit was poor. Martin's own words in Figure 3, supra, in fact mean that a real estate escrow has closed. In a real estate escrow, there is no indebted "borrower" until all loan documents are executed at close of escrow; note also that this is for "future payment;" again, it must be post-closing of a real estate escrow. It is self-evident and definitional that no "local property taxes" are owed by the buyer until close of a real estate escrow. Similarly no "homeowners insurance" is owed by the buyer until close of a real estate escrow because he has no title interest to insure: title to the property in escrow has not passed to the buyer until it is recorded with the County Recorder which also happens at the end of a real estate escrow. Again, as clearly shown by Exhibits A and B, payments are made on such taxes and insurance "impounds" after

the close of a real estate escrow. Returning to the Office's own statement in the Action at Page 7, about line 4, supra, there is no "mortgage" payment until after close of escrow.

In fact, Martin et al. mention "mortgage" only as one type of consumer "debt" which requires a series of payments. Col. 4: line 46; col. 6: ll. 38-53; col. 7-14; and col. 8: ll.5-6. Martin et al. misuse the term of art "Escrow" in alluding to "impounds" which are another form of debt payment. Col. 13: l. 48 and col. 14, lines 9, 16. These are all and the only references to specific parts of real estate law and commerce. Nonetheless, as argued above and in prior responses, in using these terms, the Martin et al. patent relates only to debt payments that are ***post-escrow*** process and procedures. Yet the Action alleges that these types of debts and the "impounds" described above make Martin et al. anticipatory of applicants escrow processes. The Office's conclusory statement that applicant's arguments "are not persuasive," supra, does not explain how such tax and insurance debt payments are the same as real escrow processes and procedures.

Regarding applicant's claim 15, and by an *arguendo* stretch of the imagination to force Martin et al. to be relevant to real estate escrow processes, note that it is only the very last element listed by present applicant, the ". . .DIGITAL TRANSFER OF ESCROW FUNDS. . ." to which Martin et al. has even allegedly provided a solution. Note that in the real world this is a payout of the escrow holder which is neither a lender, a borrower, a loan servicer, a bank, nor the like, within the common dictionary meaning of those terms or as those terms are used in the art. It can not be more clear than from Martin's own words that he is in fact not considering anything but "automated debt payment system and method using ATM network" which *by definition* excludes real estate escrow processes where funding and payment first occurs in closing the escrow itself. No interpretation is necessary to reach a valid conclusion that Martin et al. in fact speaks for itself in providing evidence *against* their having considered the complex processes and multiparty needs (as shown by applicants FIGURE, the real estate escrow process involves many parties, not just a debtor paying a lender which is a requisite feature Martin et al.) in real estate escrow processes.

If the Office continues to cite Martin, it is respectfully requested again, as in previous responses by the applicant (see e.g., Amendment After Final, June 03, 2003, Page 17, line 28 to Page 16,

line 2, incorporated herein by reference, that the exact language of Martin et al. themselves - - not mere unexplained citations to Figures or column/lines therein and an allegation that the Office's "interpretation is valid" - - be provided to the applicant for consideration since applicant can find no such language in the Martin patent.

The rejection of Claim 15 should be withdrawn.

WITH RESPECT TO INDEPENDENT CLAIM 16

Applicant claims:	The Office alleges:
A method of doing business in realty using ~~an internet~~ on-line communications, the method comprising: providing an on-line escrow account for parties to a transaction; providing on-line transactional account management services with respect to the on-line escrow account for said parties; and providing secure access to said on-line escrow account limited to the parties and third parties using on-line identification authentication.	Verbatim copy of claim 16 prior to amendment and "(see abstract, fig 2, 3, column 4, line 44-59, 5 line 36-61, 10 line 22-56, table 1, column 13 and 14)"

All of the arguments set forth above with respect to independent Claims 1, 4, and 15 are incorporated herein by reference.

Again the Office proffered no reasoning against applicants claims, merely the same chain citation. Applicants have searched the Martin reference and do not find any such elements in the Martin reference. It is respectfully requested that the Office cite the exact column and line reference where the Martin patent evidences each and every one of applicants "components" so

that applicant may respond accordingly. Otherwise, applicant is left to guess at the Examiner's argument(s).

Absent such showing, the rejection should be withdrawn.

WITH RESPECT TO INDEPENDENT CLAIM 17

Applicant claims:	The Office alleges:
A computer memory having a program for real estate escrow transactions comprising: program code providing a client-server based automation system for [[an]] said real estate escrow transactions; program code providing implementation, management, tracking, electronic documentation,and closing of specific escrow transactions; and program code allowing escrow transaction data access only for specific parties to said escrow transactions.	Verbatim copy of claim *1*: (1) "fund allocation methodology"; "real estate transaction" Action Page 2, para 3., (2) "networks, fig 2, and (3) and (4) "see abstract, fig 2, 3, column 4, line 44-59, 5 line 36-61, 10 line 22-56, table 1, column 13 and 14"

All of the arguments set forth above with respect to independent Claims 1, 4, 15, and 16 are incorporated herein by reference.

Again the Office proffered no reasoning against applicants claims, merely the same chain citation. Applicants have searched the Martin reference and do not find any such elements in the Martin reference. It is respectfully requested that the Office cite the exact column and line reference where the Martin patent evidences each and every one of applicants "components" so that applicant may respond accordingly. Otherwise, applicant is left to guess at the Examiner's argument(s). Absent such showing, the rejection should be withdrawn.

WITH RESPECT TO DEPENDENT CLAIMS 18-20

A dependent claim includes all the limitations of the claim from which it depends and, as such, makes specific that which was general. 35 U.S.C. 112; 37 C.F.R. Sec. 1.75(c); Allen Group, Inc. V. Nu-Star, Inc., 197 USPQ 849 (7th Cir. 1978); Ex parte Hansen, 99 USPQ 319 (Pat. Off. Bd. App. 1953). Dependent claims are non-obvious if the independent claims from which they depend are non-obvious. In re Fine, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988); *see also* Hartness International, Inc. V. Simplimatic Engineering Co., 2 USPQ2d 1826, 1831 (Fed. Cir. (1987) to the same effect re novelty). Thus, allowance of a base claim as patentable normally results in allowance of a claim dependent upon that claim. It is respectfully requested that the rejections be withdrawn.

Applicant reserves all rights without prejudice to submit further arguments with respect to the dependent claims should allowance not be forthcoming.

Moreover, again the Office proffered no reasoning against applicants claims, merely the same chain citation. Applicants have searched the Martin reference and do not find any such elements in the Martin reference. It is respectfully requested that the Office cite the exact column and line reference where the Martin patent evidences each and every one of applicants "components" so that applicant may respond accordingly. Otherwise, applicant is left to guess at the Examiner's argument(s).

WITH RESPECT TO NEW CLAIM 21

Applicant is entitled to "means plus function" claims which this new claim provides. All of the foregoing reasoning with respect to Claims 1-20 applies to Claim 21.

It is respectfully requested that the rejections be withdrawn.

Additional Legal Argument Response

A reference does not provide evidence of lack of novelty merely by using the same words. An "apple" does not anticipate an "orange" just because it can also be described as being "round, having an outer skin, and a juicy, pulpy core." A "specialized digital package network," supra, does not anticipate the ubiquitous Internet. An "ATM" is not a PC; it is merely an "interface" to the "specialized digital package network." A "loan servicer" is not an "escrow agent." "Debt payment" is not, and has virtually nothing to do with, "real estate escrow" processes.

The law is clear. Hindsight reasoning using the invention for which a patent is sought as a template is impermissible. Texas Instruments, Inc. v. ITC, 26 USPQ2d 1018 (CA FC 1993). It would appear from this application's file wrapper history itself that the Office is in fact not keeping to the spirit of the Texas Instruments holding. Each Action is progressively seeking new references against applicant's invention and attempting to force fit similar language from references into applicants' mold based on the present application and the prior arguments filed in support of allowance. This alone is hindsight. Moreover, the very practice of structuring grounds for rejection by simply repeating applicants' claim language and then merely sticking column and line citations of a reference therein is *de facto* use of the application as a "template." With respect to any further rejections which may issue against this application, unless a citation to column/line(s) of a reference is an exactly identical element to the present application where there can be no ambiguity as to identity of actual structure, function, way and result - - e.g., where a claim element is a "computer keyboard" and the reference "col. 10: ll. 10" has a "computer keyboard" -- applicants' respectfully request that each further rejections quote the specific language from the reference alleged to equate to each claimed element so rejected. In this manner the applicant will not be required to infer from a simple cite of "col. N: line –..." what the Office has alleged.

It is respectfully requested that the rejections be withdrawn on this ground.

SUMMARY AND CONCLUSION

Applicant's invention has nothing to do with an ATM, a specialized network path, nor a debt payment such as a mortgage payment, with or without impounds, which are the only showings within Martin's patent. The claims are distinctive. The arguments previously filed by applicant explaining that such use of an ATM is clearly only useful for payment of debt and is *post* real estate escrow procedures is incorporated herein by reference in its entirety. The Martin et al. by its own words is a "debt payment" scheme. Real estate transaction processes and procedures, sometimes performed by lawyers, sometimes performed by independent escrow companies (see EXHIBITS A and B and C) are not "debt payments." There is no due and owing debt until after closing escrow. Martin et al. by their own words provides no evidence to support the bases asserted to the contrary by the Office under Sec. 102. In fact, there is not even the slightest hint that the problem of handling the complicated, multi-party and agents processes, procedures, data and documentation of real estate escrow transactions as exemplified in applicant's FIGURE 1A-1C in the manner of the present invention was considered by Martin et al. in providing their "AUTOMATED DEBT PAYMENT SYSTEM AND METHOD USING ATM NETWORK." Each of these multiparty, subprocesses require input data from the buyer and seller as to step-by-step specifics of how the transfer of the piece of real property from the buyer to the seller. Clearly, these subprocesses can not be implemented by an ATM . How, for example, could one use an ATM to learn the status of an escrow officer's or title company's search of the County Recorder's office as to the chain of title of a specific plot of land? It can not. How can one generate "escrow instructions" using an ATM. They can not. How can one review and digitally sign documents via on-line processes? They can not. These are just a few the many real estate escrow, real estate ownership transfer, tasks prior to the execution of documents and close of escrow as shown by the present application, and indeed by the EXHIBITS filed herewith, and as claimed.

The reference holds no weight in supporting the Office's interpretation. Neither is it up to the Office to interpret nor extrapolate a reference against its ordinary disclosure and use of terms. All Martin's process, procedures, highly specialized network apparatus, and the rest only applies to debt payment which is downstream of a real estate escrow procedure. The reference

is neither anticipatory nor even relevant or material to the claims as originally filed or as now amended.

Based upon the foregoing, it is submitted that the application now presents claims which are directed to novel, unobvious and distinct features of the present invention which are an advancement to the state of the art. Reconsideration and allowance of all claims is respectfully requested. The right is expressly reserved to reassert any and all arguments, including the raising of new arguments, and the filing of appropriate continuing procedures at the USPTO, should a Notice of Allowance not be forthcoming. At this After Final stage and to advance prosecution, applicant will not belabor the points on each argument proffered in the Final Office Action, however, applicant specifically reserves the right to argue each paragraph 1-15 of the present Action on a point-by-point basis in support of any continuing procedures at the USPTO.

Questions or suggestions that will advance the case to allowance may be directed to the undersigned by teleconference at the Examiner's convenience.

Date: SEP. 25 2003

Respectfully submitted,
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